

Parens Patriae

The Federal Government's Growing Role of Parent to the Needy

"I want a home that will love me
and let me stay."

— Libby, adopted from foster care at age 14

Parens patriae, the idea of the government as "parent of the country," has deep roots in our legal system's history. Tracing its foundations back to English common law, *parens patriae* connotes the authority of a political sovereign, formerly a monarch, to care for children and other citizens who are unable to care for themselves. Our current child welfare system is the product of grafting our legal institutions, federal structure, and multiple strands of social work theory onto the principle of *parens patriae*.

Early on, the states worked alone to address problems of child welfare. Only in the years since the Great Depression has a coordinated national practice of dependent care begun to emerge in the United States. Federal legislation employing a combination of financial incentives and sanctions and the strong leadership of dedicated legislators, judges, and social service directors has resulted in improved accountability and delivery of services. A series of federal legislative acts has brought our courts and social service departments together as a cooperative parenting team. This alliance is awkward at best. The legal system is designed to reach final determinations based on clear rules and available evidence. The provision of social services, on the other hand, rests on subjective and conditional standards. The courts seek to hold individuals accountable for their actions, while social service agencies seek to modify those same actions and to provide support. In spite of their inherent tension, the child welfare system trusts this team to spend \$14.4 billion annually to provide approximately 500,000 children with out-of-home care.¹

The challenge of this responsibility is enormous, and in fact we have no real expectation that the state actually can be a good parent.² To begin with, inadequate planning caused by lack of coordination between courts and social service providers has crippled the foster-care system. Even if that were not so, children do not thrive emotionally or physically in institutional settings. Foster children live in extended legal limbo, experiencing multiple placements. All too often, high turnover at social service agencies precludes the formation of personal relationships between child-care workers and their young clients.³ And for all too many



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The American colonists brought a *parens patriae* model and good intentions from England to their new home, but it was not until 65 years ago that America began to develop a national plan for dependent care. A series of federal legislative acts, initiated by social welfare professionals, has given the courts and social service agencies the shared role of parent. Today, approximately 500,000 children receive out-of-home care at an annual cost of \$14.4 billion. But even as the child welfare "industry" continues to grow, problems with the delivery of services persist. This review of the development of dependent care in the United States may suggest reforms for the new century. ■

children, the damage—often manifesting as an inability to form emotional bonds with others—is permanent. Nevertheless, cultural changes have created a society where the power of the state is applied by force of necessity—actively, to remove children from unsafe homes; passively, to receive parentless children as it has done in the past. It has been this shift—from social services as a passive receiving entity to social services as an assertive agency that removes and protects children—that has involved the courts in a subjective, emotion-laden field unlike any other in the objective, rule-bound legal system.

THE EVOLUTION OF AMERICAN CHILD SERVICES

A historical examination of the provision of child services in America discloses a distinct trend. For the colonies, the interests of society were central. In their view (and that of their successor states) dependent children were threats to their stability and productivity; thus they sought to protect their own well-being by transforming dependents into productive members of society. As the country grew more stable and more unified, the focus of concern changed from promoting the survival of the states to mitigating the economic costs imposed on it by dependent children. Over time, the development of social welfare movements and psychological theory combined with the increasing prosperity of the country to encourage methods of care that focused more and more on caring for the well-being of children to the relative exclusion of other benefits.

English Roots: For the Good of Society

The principle of *parens patriae* appears in 12th-century English common law, according to which the monarch could dedicate personal resources to provide assistance to people with legal disabilities and to act as their guardian.⁴ The needy could gain assistance by petitioning the monarch, who distributed money, food, and other assistance on an ad hoc, discretionary basis. But by virtue of their disabilities, many needy subjects were not able to petition on their own behalf and had no legal voice. Their care then depended on members of their extended family or local charities. Orphaned children were often left on their own. Notably, there was no legal mechanism for removing a child from an abusive environment. Child protection was excluded from the traditional scope of the English ruler's parental duties.

During the Elizabethan period,⁵ economic pressures caused by urbanization and overpopulation demanded greater uniformity in the distribution of relief services. Parliament responded by passing the Elizabethan Poor Law in 1601. The Poor Law allocated governmental funds to local jurisdictions to provide services for three eligible categories of persons who had no one else to support them. First, the involuntarily unemployed were to be provided work. Second, helpless adults (the old, the sick, and the handicapped) were to be financially supported so they would be able to live on their own or with neighbors. Third, dependent children were to be given apprenticeships so they would be able to learn a trade and support themselves as adults. In addition to establishing this framework for public

care, Parliament encouraged private charity in 1601 by passing the Law of Charitable Uses. This law gave tax advantages to private contributors to charity. But the English legal system also maintained a strong disincentive to becoming dependent on public funds: it imprisoned or inflicted corporal punishment on beggars, vagrants, and others who were able, but unwilling, to work.

These were the first English attempts to create uniformity in relief efforts for the general well-being of the population. The services provided under the Elizabethan Poor Law were intended to decrease homelessness and to ensure a decent standard of living for the culture's neediest people.⁶ Although complete discretion rested with local distribution officials, society's duty to provide for its least fortunate members was now recognized by the law.

The settlement of the English colonies in North America (Jamestown in 1607 and Plymouth in 1620) occurred soon after the establishment of the policy of public care. The colonists adopted the Elizabethan Poor Law as their model for providing care to widows and orphans. Tax revenues were redistributed to needy individuals at the discretion of the local authorities. Private donations heavily supplemented the few available public funds, but, because of the relatively small population of the colonies, there was no need for widespread, organized charitable giving. The need for assistance arose most often in individual cases of misfortune such as death or injury. Ad hoc charitable efforts apparently sufficed to remedy those cases. The American colonists thus did not copy the Law of Charitable Uses as they had the Poor Law. In addition to the small colonial population and correspondingly low demand for charitable assistance, one probable reason for this omission was the relative lack of discretionary wealth in the early colonies.

The 19th Century: From Social Welfare to Child Welfare

The policy focus and resource allocation patterns in the colonies remained much the same throughout the 17th and 18th centuries. With the population growth and increased urbanization in early-19th-century America, however, public institutions were created to provide the services demanded by these phenomena. Jails, reform schools, hospitals, insane asylums, orphanages, and almshouses were established as it became more impracticable to provide charitable assistance on an ad hoc basis. Almshouses had appeared quite early in the eastern seaboard colonies, where the high-risk fishing industry left numerous widows and orphans. Their numbers increased dramatically from 1820 to 1850. By the 1850s, almshouses had become an established method of charitable housing of the destitute and disabled. People without means were housed together and supported by a limited amount of public funds. Living conditions in the almshouses were often deplorable, so only those least able or willing to care for themselves resided in them. Public expenditures for relief at that time along the eastern seaboard accounted for 10 to 35 percent of local tax revenues.⁷

As industrialization increased, and even more so as the Civil War disrupted American society, a shortage of institutional care facilities arose. Members of America's poorest families, usually urban immigrants, often died from illness and lack of medical care. Widowed mothers frequently found it financially necessary to place children in care

out of their own homes. These factors, combined with four economic panics between 1837 and 1857, caused a tremendous increase in the number of homeless children, both dependent and delinquent. Children came to account for an ever-larger percentage of the general population of the almshouses, which were intended to house children until they were old enough to enter apprenticeship. Advocates began urging reform as the press publicized conditions in the almshouses. As a more humane alternative, specialized institutions were established for the care of disabled children. In addition, by the late 1850s, states had begun to place children individually into foster-care homes.

One notable child advocate during the 1850s was Charles Loring Brace, who, in response to the growing number of delinquent children in New York, founded the New York Children's Aid Society in 1853.⁸ Brace is also credited with the idea of sending children west to provide farm labor in exchange for room and board with a family of settlers. Children traveled west on "orphan trains" sponsored both by individual benefactors and charitable organizations. At each stop, they disembarked to be inspected by local families. Children either were selected by a family or reboarded the train to travel farther west.⁹ This solution to placement was an alternative to apprenticeship, in which a child assisted a tradesman in return for housing. It reinforced the new practice of home placement that would evolve into the foster-care system, designed solely to benefit the child.¹⁰

The focus on the benefit to the child continued to increase. After the Civil War, Massachusetts established the first program that offered public money for room and board to working-class families who would accept children into their homes. Offering a solution to the problem of homeless children and reflecting a changing attitude toward their needs, it was, in effect, the nation's first foster-care program.

Early 20th Century: Focus on the Child

Beginning in the early 1900s, this shift in emphasis became more widespread. Child welfare professionals no longer viewed children solely as potential laborers. Instead, when making child placement decisions, they began to consider the emotional benefits a child received from living with a family. Social services began to place children in homelike settings or, when possible, allowed them to remain with their mothers, who received a stipend for their care.

A growing number of people became involved in providing assistance for dependent children. Public interest was strong enough that the first White House Conference on Children was held in 1909,¹¹ drawing national attention to the needs of dependent children. Many now-familiar practices, all designed to promote the well-being of the child, grew out of the 1909 conference. The conference first articulated on a national scale the desirability of preserving a child in his or her birth home when possible and placing a child in foster family care rather than in an institution when the birth home was not an option. The conference also led to the development of a voluntary Child Welfare League of America (still at the forefront of child advocacy issues) and the establishment of the Federal Children's Bureau in 1912 to conduct research and report on conditions affecting children.¹² By the late 1920s, the confer-

ence principles had taken hold. The public began to accept that the state's provision of services to her needy children could no longer depend on unfettered discretion. As *parens patriae*, the state owed her dependent children a duty of care. Professionals began to recognize the importance of a child's attachment to nurturing parents. For healthy orphaned children, foster care in family homes became widely preferred to placement in an institution.

Reforms in social services were not limited to child welfare. In the 20 years following the 1909 White House Conference on Children, 25 states voluntarily started publicly supported programs to help people regain their economic independence. This "social insurance" approach was intended to alleviate the four most common causes of dependence on charity.¹³ Programs established in various states included health insurance, workers' compensation, assistance for single mothers, old-age pensions, and unemployment compensation. The programs were by no measure generous. Mother's aid programs, for example, often used a rigid means test for eligibility and their payments ensured only subsistence living. They were, however, a first step in providing aid to families outside the context of institutional care. Illinois passed this type of assistance in 1911, and by 1926, 40 states had similar laws.

Summary

The goal of public aid and private charity in early America was to give individuals a boost out of difficult situations and to allow them to reenter society as fully contributing members.¹⁴ Children were given housing only until they were old enough to enter apprenticeship and learn a trade. By the mid-1800s, though, a change of policy in favor of children's welfare began to develop, as illustrated by the orphan trains heading west. Dependent children were placed in homes instead of institutions. However, the inducement to take a child into a home remained in large part the need for farm labor in the growing agricultural regions of the country.

By the early 1900s, social work had become more widely recognized as a profession. The new child welfare professionals saw earlier policies and practices as inadequate, failing particularly to meet the basic needs of children. Simply providing housing or short-term assistance was insufficient to provide real, meaningful help to children. Social services responded by beginning to provide active assistance, to seek out those in need.

In addition, social workers were incorporated into the social service institutions that had been established in the 1800s. Jails, hospitals, and orphanages put to use the specific skills and training of social workers to help their residents reenter mainstream society. The workers provided assistance in finding housing, financial aid, and other services, with the goal of helping the needy attain a respectable quality of life. This approach involved much more individualized care and more directed services for the recipient than did previous practices. Available public funding remained limited, so many of these services depended primarily on private donations. In particular, many religious groups established hospitals, orphanages, and other institutions to serve the less fortunate.

COMPETING JURISDICTIONS: THE FEDERALIZATION OF CHILD WELFARE SERVICES

The political development of the American colonies into separate, sovereign states bound together as one nation invited controversy over the division of powers between the states and federal government. The jurisdiction to provide social services did not escape this controversy. The Preamble to the Constitution enjoins the federal government to "promote the General Welfare"¹⁵ and Article I grants Congress specific power to do so.¹⁶ Initially, Congress was reluctant to intrude on a matter that had traditionally been the province of the states. In 1854, however, Congress passed a bill authorizing the use of federal public lands for the treatment of the insane. The President vetoed the bill on the ground that the Tenth Amendment to the Constitution reserved the power to promote the general welfare to the states and federal intervention would therefore be improper.¹⁷ Institutions of care and foster homes continued to depend entirely on state and charitable funding.

The sole 19th-century exception to the bar on federal provision of social services was the establishment of the Freedmen's Bureau in 1865. Newly freed slave families often faced extreme poverty, and the southern states had no money or will to assist them. Recognizing their predicament, Congress authorized the Freedmen's Bureau, a subsidiary of the War Department, to provide them with clothing, food, medicine, shelter, and employment assistance. The program was short-lived, however, as controversy grew over its cost and constitutionality. Congress withdrew its funding and abolished the Freedmen's Bureau in 1872.¹⁸

The Great Depression and the Beginning of Federalization

The Great Depression prompted an expansion of the scope of federal powers, the national government's next direct involvement in the provision of social services. In 1933, Congress established the Federal Emergency Relief Association to counteract the Depression's catastrophic poverty and unemployment. The Social Security Act (SSA) of 1935,¹⁹ the first general federal response to widespread social welfare issues, authorized funding for an array of programs designed to provide support for dependent children.²⁰ Under these programs, including Aid to Dependent Children (ADC), the federal government reimbursed the states for the care of needy persons according to federally mandated guidelines for relief.²¹ The SSA was a watershed; funding streams that it established, especially those under Title IV-E, continue to defray a substantial share of states' costs to fund child care.

The growth of federal involvement in local social service projects that began during the Depression obviously represents a major shift in the care of dependent children. Under the Elizabethan Poor Law's influence until the 1860s, state funds had been given to local authorities, which had the discretion to distribute them to meet local, immediate needs. Following the Civil War, state social service programs became more uniform. The SSA began the process of removing local authorities' discretionary power and placing it in the hands of federal bureaucrats, whose job was to establish centralized social service policies.

At the same time that the federal government took a financial role in the assistance of each state's needy population, state and local judges joined together to found the National Council of Juvenile and Family Court Judges in 1937.²² Courts began to evaluate their place in the system of care and protection of dependent children. Care of dependent children still fell under local jurisdiction, but already there was a growing trend to achieve nationwide uniformity in the treatment of children in foster care.

Increased Demand for Child Welfare Legislation

The fundamental aspects of the dependent-care system established during the Depression stayed more or less the same for almost four decades. The day-to-day administration and distribution of child welfare services continued to be based at the local level. Foster-care homes, some founded in the 1860s to provide care for Civil War orphans, continued to be used across the nation as a preferred placement for children. Under ADC, expanded and renamed Aid to Families With Dependent Children (AFDC) in 1962,²³ state child welfare systems provided aid for families who were unable to financially support their children.

In the 1970s, though, the population of children in care began to increase dramatically along with a developing new awareness of the effects of parental abuse and neglect on children. Increased reporting mandates combined with the social epidemic of inexpensive and damaging street drugs to create a population boom in children requiring out-of-home care. Certain categories of professionals (law enforcement officers, medical providers, and teachers) became mandatory reporters with an affirmative duty to report suspected abuse and neglect to their local Child Protective Services unit for investigation. Foster-care systems, theretofore able to effectively handle the uncommon situations of orphaned or abandoned children and to provide short-term care for poor or neglected children, found themselves overwhelmed.

Not only had the number of children taken into care ballooned, but the children themselves were also more needy. Physicians were beginning to understand the effects of prenatal drug and alcohol abuse on fetal neurological development. At the same time, psychologists were coming to grips with the repercussions of early childhood neglect on personality formation. This period also marked the beginning of an era when children were removed from "unsafe" homes. This category of children had not been served before by public welfare. As long as a child had a home or was not given up by his or her parents for financial reasons, the child welfare system had no contact with that child. Now, because of mandatory reporting, the child welfare system reached marginal families that had once been outside the scope of services.

In 1974, Congress moved to address these developments. Through passage of the Child Abuse Prevention and Treatment Act of 1974 (CAPTA),²⁴ which provided federal funds and technical assistance to local social service agencies, Congress attempted to prevent more children from being removed from their birth homes and placed in out-of-home treatment.²⁵ CAPTA also enlisted the courts in this effort. The act required a judicial determination whether "abuse or neglect" was occurring in a home and, in the event that it was, whether removal of the child was necessary.²⁶ Even

if a social worker investigated and established the existence of abuse or neglect in a home, only a judge could actually order a child removed and placed in foster care. The judiciary and social services agencies thus became partners in the growing enterprise of protecting dependent children.

In spite of these efforts, the numbers of children entering foster care continued to rise. Coupled with the stiffer reporting requirements of the 1970s, increases in drug dependence and poverty among caretakers of small children in the 1980s caused many more babies (children under age 4) taken into public care.²⁷ Children in this age group were four times more likely to be removed from their homes than were older children. By the 1990s, many of these children had not returned home as planned. Case admissions had leveled off, but the population in foster care continued to grow because very few children were exiting care.²⁸ Reunification of children with their birth families often depended upon their caretakers' successful completion of drug treatment and establishment of a stable home. In addition, children born exposed to drugs or alcohol presented more complex needs that took longer to address. In neighborhoods scarred by drug use, poverty, and unemployment, these conditions were difficult to meet.²⁹

A 1989 Boston survey concluded that parental drug and alcohol abuse was a significant factor in 89 percent of cases in which children entered foster care.³⁰ As America experienced an increase in drug usage, there was also an increase in children entering a public system of child care. In 1984, there were 246,000 children in care nationally; by 1993, there were 449,999, an 83 percent increase in less than a decade. By 1999, over 500,000 children were in foster care in the United States.³¹

Progress in the 1980s

Important progress in the provision of child welfare began in 1980 with the passage of the Adoption Assistance and Child Welfare Act (AACWA),³² which amended the SSA. The act's purpose was to "encourag[e] the care of dependent children in their own homes or in the homes of relatives by enabling each state to furnish financial assistance and rehabilitation and other services."³³ Under the law, federal funds passing through to states for child welfare services were tied to new requirements. Each state was to develop a plan to include certain statutorily specified elements and to implement local versions of federal procedures for foster-care cases. Failure to comply would lead to the loss of federal funds amounting to 50 percent of a state's total child welfare budget.³⁴ Thus, the AACWA continued the process of removing discretion from local child services.

The AACWA also provided funding to prevent the removal of a child from his or her home. A primary focus of the legislation was to address the long-standing complaint of social services agencies that funding was not available to provide services to the family while the child remained in the home. Problems such as drug or alcohol addiction or homelessness could only be addressed after the child had been removed. This discouraged parents in need of help from coming forward and voluntarily seeking assistance because they feared that, if they did so, they would lose their children.

The AACWA authorized funds to cover 180 days of "voluntary placement" in a foster home.³⁵ The social service agency was still required to move the child out of the birth home, but the placement was a cooperative arrangement between the agency and the family with the goal of returning the child home. During the period that the child was out of the home, the social worker could assist the family with its particular needs, such as employment, addiction, and housing. In effect, the child welfare worker became a social worker for the parent's needs.

The AACWA also mandated a more active role for the courts. Courts were required to evaluate whether the local department of social services had provided "reasonable services" to a family sufficient to avoid removal of the child from the home. Specifically, courts now had to hold periodic review hearings in foster-care cases, to adhere to deadlines for permanency placing decisions, and to implement procedural safeguards concerning placement and visitation.³⁶ All stages of the child protection process, from determining that a child is in danger to deciding to remove that child from his or her home, came under judicial review.

Partly in response to the AACWA, the National Council of Juvenile and Family Court Judges established the Permanency Planning for Children Project in 1980. The project responded to the new need for juvenile judges to be involved more often, and in more depth, in the management of each dependency case. The project published recommended guidelines for judicial review of dependency cases and encouraged their use in all 50 states. Local solutions were still preferred, but the guidelines set as a goal a uniform national standard of judicial competence.³⁷

Reform in the 1990s

In 1993 Congress, recognizing the demands placed on courts by their expanded role in the provision of child welfare services, increased their funding. The "Family Preservation and Support Act"³⁸ authorized the allocation of federal Department of Health and Human Services (DHHS) funds to each state's highest court via grant projects.³⁹ This legislation represented a six-year financial commitment to improving the courts' handling of child abuse and neglect cases. Under this structure, each state's judiciary could decide internally whether improvements were better made at the local (county or district) or statewide level.

Throughout the period of progress, AFDC remained the centerpiece of the federal aid scheme. Among AFDC's flaws, perhaps the most serious was that the only tool for enforcing compliance with its requirements was reduction of federal funding. AFDC was a highly regulated program that left little room for local variety or flexibility in its implementation. Federal funds were reimbursed to the states only if they followed federal regulations. If a state failed to comply, the federal government would simply cut off its entire share of funding. This remedy was such a harsh tool that it lacked effect. The loss of the federal share of the cost of social services programs would have substantially crippled the delivery of any services to the needy. The federal government was understandably reluctant to take this step. Therefore, no real tool was available to force a state to comply with federal regulations. Judge Leonard

Edwards of the Santa Clara County Superior Court has pointed out the implications of that policy:

If a judge finds that the state social service agency has not adequately delivered services to a family from whom a child has been removed, the finding may serve as the basis for removing federal funding from the agency. A negative judicial decision may thus reduce financial support for the agency and make it even more difficult to provide services to families whose children may be or have been removed.⁴⁰

To avoid creating legal orphans, courts have traditionally been hesitant to terminate parents' legal rights unless there was an adequate alternative permanent plan for the child. As a result, social service agencies were indirectly encouraged to continue to provide family services, and the child waited in foster care. As the child grew up, the likelihood of adoption decreased. In 1993, the average stay of a child in foster care in California was seven and a half years.

To remedy this problem, Congress changed the way it funded child welfare programs. In the Personal Responsibility and Work Opportunity Act of 1996,⁴¹ Congress provided block grants to states. Federal guidelines for the programs were established and financial incentives and compliance requirements were provided. However, direct provision was placed in the hand of local authorities, which could develop their own programs. This shift in federal legislation returned much of the control of services and eligibility to the local jurisdiction's department of social services and courts.

The 1996 act also addressed the growing problem of substance abuse and the failure of AFDC to return families to self-support by creating Temporary Assistance for Needy Families (TANF)⁴² to replace the AFDC model of funding child and family services programs. AFDC was still based upon the part of the original Social Security Act that was intended to provide short-term aid to widowed mothers. The expectation had been that mothers would remarry and no longer need assistance. There was no time limit on receipt of benefits.

By the 1990s, however, single-parent households were an established part of American society. The cultural premise of traditional relief programs, that single mothers would remarry, was no longer true. In addition, 80 percent of AFDC recipients were unemployed and depending on their benefits for long-term support.⁴³ TANF gave states more freedom to design and implement welfare programs to address these concerns. California responded by enacting the CalWORKs program, which required able parents to work. At the same time, it provided child-care accommodations and job training for impoverished single parents. Though the long-term effect of these programs is still uncertain, the generation of homeless children predicted by opponents of welfare reform has yet to emerge.

The Adoption and Safe Families Act (ASFA)⁴⁴ clarified the focus of federal spending on child welfare. The act amended Titles IV-B and IV-E of the SSA and built on the policies expressed in the AACWA, but addressed directly the needs of the child rather than focusing on the dysfunction of the family. Whereas the stated purpose of the AACWA had been to preserve families and provide them with support services, ASFA explicitly and deliberately shifted the focus of the child welfare worker to the

needs of the child rather than those of the family.⁴⁵ Under ASFA, each state must adopt and implement a plan that includes provisions for a child's "safe" return to his or her birth home⁴⁶ with assurances that cross-jurisdictional resources are available for timely adoptive or permanent placements. Both of these changes seem small; however, they signal a national legal commitment to promoting children's well-being and, if possible, returning them to their families, and a departure from earlier models of apprenticeship and foster care.

ASFA also responded further to the single-parent phenomenon by implementing quota requirements to move children left in foster care into permanent homes. The act placed limits on the length of time an individual adult could receive financial assistance and on the total amount of funding he or she could receive over his or her lifetime. If a state did not meet the requirements, not only would it need to reimburse the misused funds to the federal government, but it would also face sanctions or fines. The primary goal of the program was still to provide assistance to the needy, but it also attempted to hold both the state government and the individual recipient responsible for the use of the funds. ASFA thus reestablished federal control over locally implemented child welfare programs. Congress set minimum standards for the permanent placement of dependent children in adoptive homes, strongly asserting the federal government's role as *parens patriae*.

In an effort to strengthen ASFA and improve the efficiency and effectiveness of courts involved in the process of finding safe, permanent placement for dependent children, Congress passed the Strengthening Abuse and Neglect Courts Act of 2000 (SANCA).⁴⁷ Reaffirming ASFA's first-time recognition that "a child's health and safety must be the paramount consideration" when any decision concerning a child is made in the nation's child welfare system,⁴⁸ SANCA firmly establishes the framework for the federal government to serve as *parens patriae*. SANCA offers a wide range of support to abuse and neglect courts. It establishes grant programs to provide them with computerized case-tracking systems,⁴⁹ to reduce backlogs by hiring additional judges and other court personnel,⁵⁰ and to expand the Court-Appointed Special Advocate program.⁵¹ These federal grants, like those funded by previous statutes, give courts incentives to develop local approaches to solving problems of child welfare. SANCA, however, provides the courts with explicit federal direction with respect to the required goal of their programs: permanent placement of children in safe and caring homes.

CONCLUSION

The care of America's needy children began in the colonies. Orphaned or destitute children were placed in apprenticeships where they could provide additional labor and contribute to the welfare of society. The nation's child-care practice evolved slowly into today's system of far-reaching federal policies derived from the Social Security Act of 1935. In an effort to respond more effectively to the increasing numbers of children growing up in a home not their own, a combination of federal funding with loose mandates intertwined with local control of implementation has developed.

The fluctuation in funding formats mirrors the political fluctuations between centralized and decentralized government that characterize our nation's development.

The trend in social welfare policy toward taking children from institutions and moving them into locally administered individual family care seems to oppose congressional initiatives to impose federal requirements on local provision of assistance. Most of the heavy lifting, however, is still done by local agencies. Just as social service providers and the courts are taking steps to learn each other's disciplines, state and local systems are learning to work within the federal guidelines to balance the goal of family reunification with expedient permanent placement for dependent children.

The social issues of poverty, physical abuse, mental illness, and substance abuse are perennial problems in this field. Both the Elizabethan Poor Law in 1601 and the Adoption and Safe Families Act in 1997 attempted in their distinct ways to address these issues. As individual judges struggle with each dependent child's case and social service agencies struggle to make determinations of removal and family reunification, these issues will continue to arise. Governmental structures will inevitably need to revisit and revise their policies in response.

Our commitment to our children in need has not changed. As our child welfare agencies and juvenile courts struggle to provide the best possible services for our dependent children, their alliance melds ever-developing expertise with judicial authority and compassion into solutions that provide a safe starting point for our children. Our courts and social service providers have never been in a better position to place children who are victims of abuse and neglect permanently in safe and caring homes. As agents of the state, they can work to fulfill its duty as *parens patriae* by finding more suitable parents for each dependent child. In the current climate of child welfare policy, Libby and other dependent children stand a better chance than ever of finding a home to love them and let them stay.

NOTES

1. NATIONAL CENTER ON ADDICTION AND SUBSTANCE ABUSE, COLUMBIA UNIVERSITY, NO SAFE HAVEN: CHILDREN OF SUBSTANCE-ABUSING PARENTS 9 (1999).
2. *Id.* at 11.
3. KAY BROWN & DIANA PIETROWIAK, CHILD PROTECTIVE SERVICES: COMPLEX CHALLENGES REQUIRE NEW STRATEGIES 10 (U.S. Gen. Accounting Office 1997).
4. Those with legal disabilities included "infants, idiots, lunatics," and the physically disabled. BLACK'S LAW DICTIONARY 579 (5th abr. ed. 1988).
5. Queen Elizabeth I ruled England from 1558 until 1603.
6. ENCYCLOPEDIA OF SOCIAL WORK 1503 (National Ass'n of Soc. Workers Press 17th ed. 1977).
7. *Id.* at 1505.
8. The Children's Aid Society continues to provide social services to children. Over the years, many CAS programs have served as national models. By the end of the 19th

century, it had established the first industrial schools, PTA, visiting nurse service, nutrition programs, free dental clinics, day schools for disabled children, and the forerunners of foster care, kindergarten, and fresh-air vacations.

9. *Id.* at 1507.

10. *Id.* at 148.

11. *Id.* at 1508.

12. *Id.*

13. The most common causes of dependence were ill health or accident, single motherhood, old age, and unemployment.

14. *ENCYCLOPEDIA OF SOCIAL WORK*, *supra* note 6, at 1503.

15. U.S. CONST. preamble.

16. U.S. CONST. art. I, § 8, cl. 1.

17. *ENCYCLOPEDIA OF SOCIAL WORK*, *supra* note 6, at 1506; see U.S. CONST. amend. X.

18. See *Records of the Bureau of Refugees, Freedmen, and Abandoned Lands*, in NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (1861–1879) (Record Group 105), at www.nara.gov/guide/rg105.html. See generally W.E. Burghardt DuBois, *The Freedmen's Bureau*, 87 ATLANTIC MONTHLY 354 (1901), at www.theatlantic.com/issues/01mar/dubois.htm and www.theatlantic.com/issues/01mar/dubois2.htm.

19. Social Security Act, ch. 531, 49 Stat. 620 (1935) (codified as amended at 42 U.S.C.A. §§ 301–1397jj (West 1991 & Supp. 2000)).

20. Programs authorized by the SSA included Aid to Dependent Children (later Aid to Families with Dependent Children [AFDC]), Maternal and Child Health Services, Services for Crippled Children, and Child Welfare Services. *Id.*

21. *ENCYCLOPEDIA OF SOCIAL WORK*, *supra* note 6, at 1510.

22. PERMANENCY PLANNING FOR CHILDREN DEP'T, NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, ADOPTION ROUNDTABLE: A SUMMARY OF JUDICIAL CONCERNS ABOUT PERMANENT PLACEMENT OF CHILDREN IN THE UNITED STATES & THE UNITED KINGDOM 13 (1998).

23. Public Welfare Amendments, Pub. L. No. 87-543, § 104(a)(3), 76 Stat. 172, 185 (1962).

24. Child Abuse Prevention and Treatment Act of 1974, Pub. L. No. 93-247, 88 Stat. 4 (1974).

25. BROWN & PIETROWIAK, *supra* note 3, at 7.

26. Leonard P. Edwards, *The Future of the Juvenile Court: Promising New Directions*, 6 FUTURE OF CHILDREN 131–39 (Winter 1996).

27. BROWN & PIETROWIAK, *supra* note 3, at 7.

28. FRED H. WULCZYN ET AL., AN UPDATE FROM THE MULTISTATE FOSTER CARE DATA ARCHIVE: FOSTER CARE DYNAMICS 1983–1997, at 54 (Chapin Hall 1999).

29. BROWN & PIETROWIAK, *supra* note 3, at 9.

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30. ELLEN SITTENFELD BATTISTELLI, MAKING MANAGED HEALTH CARE WORK FOR KIDS IN FOSTER CARE 10 (Child Welfare League of Am. 1996).

31. *Id.*

32. Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (1980).

33. *Id.* § 101(a)(1), 94 Stat. at 501.

34. *Id.* § 101(a)(1), 94 Stat. at 503.

35. *Id.* § 102(a), 94 Stat. at 513–14.

36. *Id.* § 101(a)(1), 94 Stat. at 511.

37. PERMANENCY PLANNING FOR CHILDREN DEP'T, NATIONAL COUNCIL OF JUVENILE & FAMILY COURT JUDGES, RESOURCE GUIDELINES: IMPROVING COURT PRACTICE IN CHILD ABUSE & NEGLECT CASES (National Council of Juvenile & Family Court Judges 1995). The American Bar Association adopted these guidelines on August 9, 1995.

38. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, §§ 13711–13716, 107 Stat. 312, 649–658 (1993). The purpose of these sections was to promote family strength and stability, enhance parental functioning, and protect children.

39. *Id.* § 13712, 107 Stat. at 649.

40. Edwards, *supra* note 26, at 139.

41. Personal Responsibility and Work Opportunity Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

42. *Id.*

43. NATIONAL CENTER ON ADDICTION & SUBSTANCE ABUSE, *supra* note 1, at 17.

44. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997). "The safety of the children to be served shall be of paramount concern." *Id.* § 101(a), 111 Stat. at 2116.

45. *Id.* § 101(a), 111 Stat. at 2116.

46. *Id.* § 102, 111 Stat. at 2117–18.

47. Strengthening Abuse and Neglect Courts Act of 2000 (SANCA), Pub. L. No. 106-314, 114 Stat. 1266 (2000).

48. *Id.* § 2, 114 Stat. at 1266.

49. *Id.* § 4(a)(1), 114 Stat. at 1268.

50. *Id.* § 5(c), 114 Stat. at 1273.

51. *Id.* § 6(a), 114 Stat. at 1274.